



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



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SUPERINTENDENT OF
PUBLIC INSTRUCTION

July 28, 2008

MEMORANDUM

TO: State Board of Education

FROM: Michael P. Flanagan, Chairman 

SUBJECT: Presentation on the Updated Policy for the Appointment of Surrogate Parents for Special Education Services

Included in the reauthorized Individuals with Disabilities Education Act (IDEA) 2004 are new requirements for the appointment of surrogate parents for students with disabilities. Michigan's surrogate parent policy, Attachment A, has been revised to include the new IDEA language, to update legal citations, and to correct out-of-date language.

The new IDEA surrogate parent language includes: protection of a student's rights if the student is an unaccompanied homeless youth; provision for a judge to appoint a surrogate parent for a child who is a ward of the court; clarification of surrogate parent appointments and interests that conflict with the interest of a child; and, the requirement that the state education agency make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that a surrogate parent is needed.

This policy will be on the Board's September Agenda for approval.

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Policy for the Appointment of Surrogate Parents for Special Education Services



*Office of Special Education and
Early Intervention Services*

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POLICY FOR THE APPOINTMENT OF SURROGATE PARENTS FOR SPECIAL EDUCATION SERVICES

The "Policy for the Appointment of Surrogate Parents for Special Education Services" (Policy) applies to public agencies engaged in the education or care of individuals covered under the Individuals with Disabilities Education Act (IDEA) **2004**. The Policy is intended to interpret federal provisions and the laws of the state as they may pertain to the provision of special education programs and services where those respective state and federal jurisdictions coincide.

Policy

It is the policy of the State Board of Education (SBE) that each public agency, within the meaning of the IDEA, shall ensure that the rights of a child are protected when:

1. No parent, as defined in ~~34 C.F.R. §300.203~~ **34 C.F.R. §300.30**, can be identified; or
2. The public agency, after reasonable efforts, cannot discover the whereabouts of **locate** a parent; or
3. The child is a ward of the State under the laws of the state; or
4. **The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).**

The duty of a public agency, under the aforementioned laws, includes the assignment of an individual to act as a "surrogate for the parent," and requires the development of a method for:

1. Determining whether a child needs a surrogate ~~for the parent~~; and
2. For assigning a surrogate for the parent to the child.

The "surrogate for the parent" may represent the child in all matters relating to:

1. The identification, evaluation, and educational placement of the child; and
2. The provision of a free appropriate public education (FAPE) to the child (~~34 C.F.R. §300.515~~ **34 C.F.R. §300.519(g)**).

Michigan's Revised Administrative Rules for Special Education (Rules) use the term "surrogate parent" at R 340.1725f. The Rules reference procedures for the appointment of a surrogate parent **as approved by the state board of education.**

Definitions

The term "surrogate parent" ~~is not expressly defined, but rather~~ is functionally defined in the federal regulations implementing the IDEA. There is no definitional equivalent for the term in state law. ~~The regulations use the terms "surrogate parent" and "surrogate for the parents" interchangeably (34 C.F.R. §300.515).~~

The term "parent" as defined in 34 C.F.R. §300.2030 means a parent, a foster parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with 34 C.F.R. §300.51519. The term does not include the state if the child is a ward of the state. 34 C.F.R. §300.2030 provides that "parent" includes persons acting in the place of a parent, such as a grandmother or step-parent with whom the child lives, as well as persons who are legally responsible for a child's welfare. ~~Under 34 C.F.R. §300.20, a foster parent may act as a parent if the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under the IDEA, and has no interest that would conflict with the interests of the child.~~

Michigan's Rule, R 340.1701b(e), defines "parent" in parallel language to the federal regulations. The term "parent" also means the affected youth with a disability when the ~~student~~youth reaches 18 years of age, if a legal guardian has not been appointed by appropriate court proceedings.

Public agencies include local educational agencies (LEA), intermediate school districts (ISD), the Michigan Department of Education (MDE), the Michigan Department of Community Health (MDCH), the Family Independence Agency (FIA) ~~Michigan Department of Human Services (MDHS)~~, and the Michigan Department of Corrections (MDOC).

Procedures

The federal implementing regulations for the IDEA place a twofold duty on public agencies:

1. To determine whether a child needs a surrogate ~~for the parent~~; and, if so,
2. To ~~assign~~appoint the surrogate parent.

The regulations require the development of a method to carry out this duty. Those regulations, case law, and official interpretations related to application of the regulations,

provide additional clarification about requirements. The following procedures incorporate those considerations.

The differences in organizational structures and missions of service among those public agencies included in the definition compel flexibility in how those agencies are permitted to administer their responsibility efficiently and in a manner that keeps the surrogate **parent** resource as proximal as possible to the population in need.

Public agencies, particularly state governmental agencies, may carry out this duty as a central administrative office activity, or as a decentralized responsibility assigned to specific facilities or agency subunits. ~~LEAs, PSAs, or ISDs may likewise carry out this responsibility independently, in consortium, or as an ISD function.~~

The procedure that best suits the particular public agencies involved must be described in the ISD Plan for the Delivery of Special Education Programs and Services (Plan), or in the interagency agreement with the MDE.

To meet the federal requirements, the following characteristics apply to this Policy and any specific agency procedure.

A public agency may select, as a surrogate, a person who is an employee of a nonpublic agency that only provides non-educational care for the child, and who meets the standards at 34 C.F.R. §300.519(d)(2)(i)-(iii).

Public agencies shall ensure that a person selected as a surrogate **parent**:

1. ~~Is not an employee of the state educational agency (SEA), the LEA, or any other agency that is involved in the education or care of the child; and~~
2. ~~Has no interest that conflicts with the interest of the child he or she represents; and~~
3. ~~Has knowledge and skills that ensure adequate representation of the child; and~~
4. ~~A public agency may select, as a surrogate, a person who is an employee of a nonpublic agency that only provides non-educational care for the child, and who meets the standards in paragraphs (c)(2)(ii) and (iii) of 34 C.F.R. §300.515. Is assigned not more than 30 days after there is a determination by the agency that the child needs a surrogate (§300.519(h)).~~

Delineation of Operational Responsibilities

The MDE, under its general supervisory responsibility and as the federal grant recipient, has the responsibility to assure that surrogate parents are available for any child covered under the IDEA who is in need of a surrogate ~~for the parent~~ **and that surrogate parents are assigned within the 30 day timeline.**

Each public agency that has the responsibility for providing the education or care of the individual has the responsibility to develop and maintain an ~~adequate pool~~ of potential surrogate parents, **pursuant to the ISD Plan or the interagency agreement with the MDE.**

If the student is a ward of the state or the court, ~~the agency having the responsibility for the general care of the student should~~**shall have the responsibility to appoint a surrogate parent** conforming to the requirements of the IDEA.

If the student is not ~~the~~ a ward of the state or the court, the public agency responsible for the special education of the student ~~has the responsibility to appoint a surrogate parent.~~

If the student is a ward of the state, the ~~identification and whereabouts~~ **location** of the parent, as well as the ~~status of residual parent rights,~~ should be known. If these factors are not known, then the agency with which wardship resides is ~~generally thought to be the~~ agency that is responsible for the general care of the individual. That agency ~~should~~**shall** identify a surrogate parent ~~from the pool of potential surrogate parents.~~

The IDEA allows for the appointment of a surrogate parent by a judge overseeing the case of a child who is a ward of the state, provided that the surrogate parent meets the requirements at 34 C.F.R. §300.519(c). A *guardian ad litem* does not automatically meet the standards of a parent or surrogate parent. To act as a parent or surrogate parent, the *guardian ad litem* must be specifically designated as such by the court.

If the student is an unaccompanied homeless youth, the LEA shall appoint a surrogate parent.

The MDE has the responsibility to resolve conflicts arising from determination of whether the need for a surrogate parent exists and/or if the proposed surrogate ~~parent~~ is free from conflict of interest.

Each ISD must assure that the ISD and LEA comply with this Policy. Each ISD Plan or **Interagency** agreement must provide a description of how the pool of surrogate parents is maintained and how appropriate training is provided to potential surrogate parents.

To be effective, the training should incorporate:

1. Laws governing the provision of special education services, including those pertaining to procedural safeguards; and
2. Characteristics of the public agency and/or district providing care of special education for the child in question; and
3. Individualized educational ~~planning~~**program** team responsibilities and processes; and
4. The opportunity for the surrogate parent to become familiar with the needs of the child to whom the surrogate **parent** has been appointed.

Developing and Maintaining the Parent Surrogate Resource

When the need for a surrogate parent arises, it is usually under circumstances that are governed by time lines; i.e., when the agency receives a referral of a child who ~~is~~**may be suspected to be disabled****eligible for special education programs or services**, or when the agency proposes or refuses to change the evaluation, diagnosis, placement, or FAPE for a child, or for any follow-up proceedings to resolve conflicts such as hearings or complaints involving the child. It is essential, as a condition of timely resolution of the activity and for fundamental fairness**of due process**, that a surrogate **parent** be appointed in an expeditious manner **and no more than 30 days after there is a determination that the child needs a surrogate parent**. For ~~that~~**these** reasons, it is important to have developed a resource to obtain adequately prepared surrogate parents.

There are various public or private associations or organizations to which a public agency may turn as a source to supply surrogate parents when the need arises. Depending on the nature and primary mission of the public agency, one source may be more appropriate than ~~the other~~**another**.

In the case of an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to whether the surrogate is an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child, until a surrogate parent can be appointed who meets the employment, conflict of interest, and adequate representation requirements (§300.519(f)).

Special Education Parent Advisory Committees

~~ISDs are required by State law to~~ **State law requires that ISDs maintain a Special Education Parent Advisory Committee (PAC) that is composed of parents of children with disabilities. Members of this PAC could serve as surrogate parents, or the PAC could assume some coordinating role in the development of the surrogate parent resource.**

Many state agencies that have the responsibility for the residential care and the education of ~~thea~~ child also have parent advisory committees that could serve in a capacity similar to the ISD PAC.

Other resources:

- Citizen advisory groups associated with the primary care agency
- Foster parent agencies
- Volunteer service agencies
- Parent organizations
- **Facilities and agencies providing services to homeless youth**
- **Faith-based organizations**

Resolution of Conflicts Regarding Appointment of Surrogate Parents

If a question as to the need for a surrogate parent arises, or if there is a question as to the appropriateness (existence of a conflict of interest) of ~~thea~~ particular surrogate parent appointment, the agency responsible for appointing the surrogate parent ~~should~~**shall** immediately attempt to resolve the question by meeting with the individuals who ~~gave rise to~~**raised** the question.

~~If the conflict cannot be resolved in a timely fashion to address the pending education matters, the agency with the responsibility to appoint the surrogate for the parent should immediately petition the MDE's Office of Special Education and Early Intervention Services (OSE/EIS) director to resolve the conflict.~~

~~The director shall assign a staff member to investigate the matter and to file a disposition report. The agencies holding the question should be responsible to clearly identify the specific areas in dispute and to provide all information necessary and requested by the OSE/EIS staff.~~

~~The OSE/EIS determination may be appealed to a court of competent jurisdiction.~~

~~Alternatively,~~ a formal complaint may be filed **with the Office of Special Education and Early Intervention Services** against the responsible agency regarding the appointment of a surrogate parent.

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